APPENDIX A

§ 17-10-6 ABSENTEE VOTING § 17-10-7

§ 17-10-6. Form of absentee ballots.

The official ballots for any election to which this chapter pertains shall be in the same form as the official regular ballots for the election, except that they shall have printed thereon the words, "Official Absentee Ballot."

§ 17-10-7. Form of affidavit to be printed on envelope—General, special or municipal elections.

Each absentee ballot shall be accompanied by an envelope upon which shall be printed an affidavit. This affidavit which shall be used in general, special or municipal elections shall be substantially as follows:

"State of Alabama

"County of .....

"I, the undersigned, do swear (or affirm) that:

"(1) I am a resident of .....county in the state of Alabama.

"(2) My place of residence in Alabama is:

.....

(street)

....., Alabama ... .

(city or town) (zip code)

"(3) My voting precinct (or place where I vote) is:

.....

"(4) My date of birth is:.....

month day year

"(5) I am entitled to vote an absentee ballot because:

"Check only one:

_____ I have moved from Alabama less than thirty days prior to the election.

_____ I will be out of the county or the state on election day.

_____ I am physically incapacitated and will not be able to vote in person on election day.

"I further swear (or affirm) that I have not voted nor will I vote in person in the election to which this ballot pertains.

"I have marked the enclosed absentee ballot voluntarily and that I have read or had read to me and understand the instructions accompanying this ballot and that I have carefully complied with such instructions.

"Moreover, I further swear (or affirm) that all of the information given above is true and correct to the best of my knowledge and that I understand that by knowingly giving false information so as to vote illegally by absentee ballot that I shall be guilty of a misdemeanor which is punishable by a fine not to exceed $1,000.00 and/or confinement in the county jail for not more than six months.

.....

(Signature or mark of voter.)

"Note: Your signature must be witnessed by either: A notary public or other officer authorized to acknowledge oaths or two witnesses 18 years of age or older.

"Sworn to and subscribed before me this.....day of..... 19..... I certify that the affiant is known (or made known) to me to be the identical party he claims to be.

..... (Signature of official)

(Title of official)

.....

(Address of official)

OR

"1st Witness.....

Signature

.....

Print name

.....

Address

.....

City Zip Code

"2nd Witness .....

Signature

.....

Print name

.....

Address

.....

City Zip Code"

APPENDIX B

Alabama Election Handbook

SIXTH EDITION

qualifications of each applicant.

In addition, the application contains an oath to support the United States Constitution and the Constitution of Alabama and a statement in the oath that the applicant disavows any belief or affiliation with any faction which advocates the over throw of the United States government or the State of Alabama by unlawful means. Under no circumstances is the applicant required to answer any question, written or oral, not related to his/her qualifications to register. If the applicant is unable to read or write, a member of the board or a deputy of the board must read to the applicant the application and the oath and the applicant's answers must likewise be written down by a board member or deputy. Such an applicant is considered registered upon meeting all other previously mentioned requirements [§17-4-122].

Absentee Ballots

A qualified voter who is either physically disabled from going to the polls or a qualified voter who is outside the county on election day may obtain an absentee ballot.

Any qualified voter falling within these two categories must file an application for a ballot in writing not less than 5 days prior to the election [See Appendix for Forms]. Such an application, which can be obtained from the absentee election manager, must include the applicant's name, address, and other information necessary to verify the applicant as a registered voter, and the address to which the ballot should be mailed. An applicant may request assistance in completing the application but must actually sign the form.

If the applicant signs by a mark, then the names of the witnesses to the signature must be included as well. The completed application can then be mailed or delivered to the absentee election manager [§17-10-3, §17-10-4 as amended]. The above provisions apply to both municipal and county elections [§ 17-

1-1]. Recent changes in Alabama election law provide that affidavits required for absentee ballots may be either notarized or witnessed by two individuals to validate the ballot [§§17-10-6, 7, and 8].

All persons voting by absentee ballot must have their ballots notarized by a notary public or anyone authorized to notarize documents or two witnesses 18 years of age or older. Otherwise, the ballot will not be counted.

Election Day

On the day of the election, voters vote. They may require assistance and all must follow certain procedures to vote.

Voting

On the day of election, voters desiring to vote must go to their appropriate voting precinct as it appears in the voting list published prior to the election.

Voters should pay special attention to these published voting lists for several reasons. Often precinct boundaries are changed for one reason or another (usually to keep all precincts equal in the number of prescribed voters) prior to elections. Hence, a voter who has voted in a particular location for many years may suddenly find he/she no longer votes in the same polling place but in an entirely new one.

Another reason for checking the voters' list is that the voting locations may vary as the type of election changes. For instance, voting precincts for municipal elections may be entirely different from those for non-municipal elections (i.e., county, state elections). Also it is a good idea to check the voting lists when they are published to ensure that the voter is properly listed and to enable him/her to correct any discrepancies should they exist.

Voting Assistance

Previously, voting assistance, under state law, was limited to those unable to read or write or to those physically incapable of making a cross mark on the ballot . However, the state law for providing such assistance was declared unconstitutional in 1988 by the United States District

Absentee Ballot Form

Applications need not be in any particular form, but they must include sufficient information to identify the applicant. An application for an absentee ballot must have the name of the applicant, the address of the applicant's place of residence, and the address to which the ballot is to be mailed [§17-10-4] (Check the appendix for a sample application).

Alabama law does not prohibit an individual from obtaining and distributing blank absentee ballot applications.

Delivery, Counting & Reporting Absentee Ballots

Each prospective absentee voter who meets the legal requirements is furnished an absentee ballot and two envelopes for returning the marked ballot by mail. One envelope is a plain envelope in which the voter's marked ballot is sealed. The second envelope must have the voter's affidavit printed on the back and be large enough to seal the plain envelope inside. This second envelope is to serve as a return mail envelope as well.

Upon receipt of the absentee ballot, the absentee election manager must record such on the absentee list and safely keep the ballots without breaking the seal of the affidavit envelope until election day. Beginning at noon of election day, the absentee election manager must deliver the sealed affidavit envelopes to the election officials. The elections officials then call the name of each voter casting an absentee ballot, review the affidavits to certify that each applicant is entitled to vote, then deposit the

envelope containing the ballot into the sealed ballot box to be counted and reported after the polls close [§ 17-10-10].

Generally, the cast of absentee election officials includes three managers, two clerks, and a returning officer. In the event a county has a population of greater than 50,000, the group of election officers as described above must be appointed for every 200 absentee ballots cast. However, in municipal elections held at a time other than the primary

Absentee Poll Workers

Absentee poll workers are appointed by the appointing board as are other poll workers. A complement of absentee poll workers consists of three managers, two clerks, and a returning officer. In counties of over 50,000 population there shall be one such group of poll workers for each 200 absentee ballots or fraction thereof [§ 17-10-11].

Absentee poll watchers may also be appointed just as the watchers are appointed [§ 17-10-11].

The task of absentee poll workers on election day falls into two phases. Beginning at noon (or later) they are to open the affidavit envelopes, review the affidavits, and deposit the plain envelopes in a sealed ballot box.

If, upon examination, the affidavit is not properly witnessed or notarized, is not signed by the voter, or does not otherwise contain sufficient information to determine that the person is a qualified elector and is entitled to vote absentee, the ballot should not be counted [Attorney General's opinion 80-00551]. Otherwise, the ballot should be deposited into a sealed ballot box.

If the absentee ballot is challenged but does not appear to be invalid on the face of the affidavit, the ballot should be counted; the affidavit, however, should be marked challenged with the basis of the challenge listed and turned over to the district

attorney for investigation [Attorney General's opinion 80-00551].

All applications and affidavits for an absentee ballot should be preserved in case of a contest or in the event that an investigation by the district attorney reveals evidence which would warrant some prosecutorial action [Attorney General's opinion 80-00551].

The second phase consists of opening the plain envelopes and counting the ballots. The procedure for absentee poll workers is generally the same as for poll workers in paper ballot counties and may not begin until the polls close.

APPENDIX C

80-00551

OFFICE OF THE ATTORNEY GENERAL

CHARLES A. GRADDICK
Attorney General
State of Alabama
Sept.12 1980

Honorable James E. Floyd
Clerk & Register of Circuit Court
P. O. Box 418
Carrollton, Alabama 35447

Pickens County - Elections — Absentee Voting
Absentee election manager should not accept an absentee ballot unless it is (1) mailed to him, or (2) hand delivered to him in person by the voter .
Discussion of procedure to be followed by absentee election manager where affidavit on absentee ballot is incorrect.
Opinion by Assistant Attorney General Breland

Dear Mr. Floyd:

This is in response to your request for an opinion from this office of July 28, 1980, regarding the proper procedure for returning absentee ballots.

Your first question is whether Section 5 of Act No. 80-732, which amends Section 17-10-9, *Code of Alabama 1975*, prohib-

its a second party from delivering an absentee ballot to the absentee ballot manager. My opinion is that it does. Section 5 of Act 80-732 states, in pertinent part:

"After marking the ballot and subscribing the oath herein required, the voter shall seal his ballot in the plain envelope provided, place that plain envelope inside the affidavit envelope, complete the affidavit, *and shall forward it by United States mail to the addressee or shall hand it to him in person.*" (Emphasis added)

According to this section, an absentee voter must either mail the ballot to the absentee election manager or deliver it in person. He cannot have another person deliver the ballot for him. This answers your second question, which is whether the absentee ballot manager can accept more than one ballot from any individual. Of course, if each person must either mail or hand deliver his own ballot, this would necessarily prohibit anyone from delivering more than one ballot. You should not accept more than one absentee ballot from any person.

Your last question is to ask what steps you should take if an affidavit is not correctly or fully made. Section 6 of Act 80-732 , which amends Section 17-10-10. *Code of Alabama 1975* , provide, in part:

> "Upon receipt of the absentee ballot, the absentee election manager shall record its receipt thereof on the absentee list as provided in 17-10-5 and shall safely keep the ballot without breaking the seal of the affidavit envelope. On the day of the election, beginning at 12:00 Noon, the absentee election manager shall deliver the sealed affidavit envelopes containing absentee ballots to the election officials provided for in section 17-10-11, and such election officials shall call the name of each voter casting an absentee ballot with poll watchers present as may be provided under the laws of Alabama and shall open each affidavit envelope,

review the affidavit to certify that such voter is entitled to vote and deposit the plain envelope containing the absentee ballot into a sealed ballot box."

This section indicates that the election officials are charged with the duty of reviewing the affidavits to certify that the voter is entitled to vote. If, upon examination, the affidavit obviously does not comply with Alabama laws that is, if it is not properly witnessed or notarized, is not signed by the voter, or does not otherwise contain sufficient information to determine that the person is a qualified elector and is entitled to vote absentee, the ballot should not be counted; otherwise, the ballot should be deposited into a sealed ballot box. If the absentee ballot is challenged but does not appear to be invalid on the face of the affidavit, the ballot should be counted The affidavit, however, should be marked challenged with the basis of the challenge listed and turned over to the District Attorney for investigation.

All applications and affidavits for an absentee ballot should be preserved in case of a contest or in the event that an investigation by the District Attorney reveals evidence which would warrant some prosecutorial action.

I hope that I have answered your question sufficiently. If this office can be of further help, please let me know.

Very truly yours,

/s/Charles A. Graddick

CHARLES A. GRADDICK
Attorney General

APPENDIX D

CV 94-PT-2816-M
Filed NOV. 18, 94 5:23 p.m.
U.S. DISTRICT COURT N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA MIDDLE DIVISION

RALPH E. BRADFORD, SR., individually as an African-American citizen of the State of Alabama, and on behalf of all other African-American citizens of the State of Alabama similarly situated;

PLAINTIFF,

v.

THE STATE OF ALABAMA; JAMES BENNETT, in his official capacity as Secretary of State for the State of Alabama; BOBBY JUNKINS, in his official capacity as Probate Judge of Etowah County, Alabama; JAMES HAYES, in his official capacity as Sheriff of Etowah County; BILLY S. YATES, in his official capacity as Circuit Clerk of Etowah County, Alabama,

DEFENDANTS.

AMENDED ORDER

At a hearing of plaintiff's motion for a temporary restraining order before a panel of three judges, the court has heard this matter and believes that the equities require immediate relief pending further hearing on this matter. In part, this court relies on the decision in *Turner v. Webster*, 637 F. Supp. 1087 (N.D. Ala. 1986) (3-judge panel) and Ala. Code § 17-10-7, and hereby **AMENDS** its order issued at 10:04 a.m. today.

WHEREFORE, this court hereby **ORDERS** and **DECREES** as follows:

1. The defendants and each member of the defendant class and their successors in office are hereby enjoined from counting absentee ballots that do not include a notarized signature or the signature of two witnesses if such ballots could have been counted subsequent to 5:00 p.m., November 15, 1994.

2. All defendants and all members of the defendant class and their successors in office are hereby enjoined from complying with or enforcing any order of the Circuit Court of Montgomery County, Alabama in *Odom v. Bennett*, No. CV 94-2434 (Montgomery Co. Cir. Ct.) which directs the counting of absentee ballots not notarized or properly witnessed pending the further orders of this court; and,

3. The Secretary of State is further enjoined from certifying any result from the November 8, 1994 election that could include the counting of any absentee ballots that do not include a notarized signature or the signature of two witnesses, if such ballots could have been counted after 5:00 p.m., November 15, 1994.

4. In addition, Judge Joe Phelps, Judge Eugene Reese and each other judge in the Montgomery County Circuit Court is hereby **ENJOINED** against the issuance and implementation of any order which provides for the counting of previously rejected or uncounted absentee ballots in the November 8, 1994 election, including but not limited to the order attached hereto, dated November 16, 1994.

5. Defendant Bennett is hereby **ENJOINED** to give notice of this order to the Circuit Court for Montgomery County, Alabama, and Circuit Judge Eugene Reese.

6. The court hereby **ORDERS** counsel for plaintiff to give oral notice of this order to the Montgomery County Circuit Court, and to Circuit Judge Gene Reese, and thereafter to expeditiously cause dissemination of this order or notice thereof to all defendants.

7. This Order is also binding upon the Democrat and Republican Parties, their officials, representatives and agents.

8. Plaintiff's counsel has certified to the court that additional efforts were made to contact Secretary of State Bennett after the filing of the complaint, and Mr. Bennett has been notified of the request for relief as well as the hearing set by the court for 12:00 noon on November 18, 1994.

9. The court requires a $1,000.00 cash bond which has been posted.

10. The hearing on the motion for preliminary injunction is hereby consolidated with the hearing on the merits, as agreed by the parties, and such hearing shall begin at 9:00 a.m., Tuesday, November 22, 1994, and proceed at such other times as may be appropriate.

DONE and **ORDERED** this 18th day of November, 1994.

/s/Robert B. Propst
ROBERT B. PROPST

UNITED STATES DISTRICT JUDGE

Case No. CV-94-2434

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, ALABAMA

MICHAEL LEWIS ODOM, and JOHN W. DAVIS on behalf of themselves and others similarly situated,

Plaintiffs,

v.

JIM BENNETT, WALKER HOBBIE, JR. DEBBIE HACKETT, and DAN JONES, in their official capacities,

Defendants.

ORDER

Based upon the complaint filed in this case, sworn testimony and other evidence, this Court hereby issues the following Order in accordance with the Law, evidence and the relief sought. The named Defendants and all members of the Defendant class are hereby instructed to recount the absentee ballots cast in the November 8, 1994, election for all candidates in each of Alabama's counties. The ballots will be counted in accordance with the criteria set out in the Supreme Court of Alabama opinion styled *William v. Lide*, 628 So.2d 531 (Ala. 1993). In accordance with *Williams v. Lide*, those persons counting the absentee ballots for each county shall count each ballot which contains: (1) the place of residence of the person casting the ballot; (2) the reason for the vote or voting absentee ballot; and, (3) the signature of the voter. Absentee ballots may not be excluded from being counted because of a lack of notarization or a lack of witnesses.

For purpose of this Order, the Court finds that this action is an appropriate one for class action treatment both for the Plaintiff class as defined in the Complaint and for the Defendant class as defined in the Complaint. For purposes of clarification, the Defendant class is defined so as to include the probate judges, circuit clerks, and sheriffs of all sixty-seven counties in the State of Alabama. Where any of those three officers was a candidate for election on November 8, 1994, and was therefore excluded from serving as an election supervisor then the person who took that office-holder's place is a member of the Defendant class and is subject to this Order and the injunction contained herein.

The Defendant class is enjoined to complete the recounting of the absentee ballots, and the amendment to the certification of election results instanter. The election officials, County Board of Supervisors, the Absentee Box Manager, and the absentee box vote counters of each county shall expeditiously convene and count the previously rejected ballots in accordance with this Order. After the appropriate persons shall have counted the ballots, each respective county shall forward to the Secretary of State a separate certification of votes which contains solely the previous rejected absentee ballots.

Because of the urgency of this cause, it is further Ordered that the Judge of Probate of each county shall forthwith be served a copy of this Order by the Circuit Clerk of this court by facsimile and the terms and conditions herein be implemented forthwith by Defendants and Defendant class.

The Court directs that the amended certifications be delivered to the Secretary of State by a deputy sheriff or an election official from each of the sixty-seven counties covered by the scope of this Order.

Further, Defendant Bennett is enjoined from certifying and/or compiling vote totals in all races until the recounting of the absentee ballots has been effected and until he has received all of

the amended recertifications reflecting the recounting of the absentee ballots. At the time Defendant Bennett receives all of the amended recertifications, then Defendant Bennett shall certify the election results in all races.

The Circuit Clerk shall proceed forthwith by facsimile or other means to provide a copy of this Order upon Defendants and Defendant class.

DONE this the 16 day of November, 1994.

/s/Eugene W. Reese
EUGENE W. REESE
Circuit court Judge

APPENDIX E

CV 94-PT-2816-M
Filed Nov 25, 1994; 9:25 a.m.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA MIDDLE DIVISION

RALPH E. BRADFORD, SR., individually as an African-American citizen of the State of Alabama, and on behalf of all other African-American citizens of the State of Alabama similarly situated;

PLAINTIFF,

v.

THE STATE OF ALABAMA; JAMES BENNETT, in his official capacity as Secretary of State for the State of Alabama; BOBBY JUNKINS, in his official capacity as Probate Judge of Etowah County, Alabama; JAMES HAYES, in his official capacity as Sheriff of Etowah County; BILLY S. YATES, in his official capacity as Circuit Clerk of Etowah County, Alabama,

DEFENDANTS,

MICHAEL LEWIS ODOM and JOHN W. DAVIS,

INTERVENORS-DEFENDANTS.

MEMORANDUM OPINION

As the judge to whom this case was initially assigned, and as the sole judge who issued the temporary restraining order, as amended, which was issued on November 18, 1994, this judge further addresses his reasons for voting to dissolve the temporary restraining order and to deny the application for preliminary

injunction. This judge makes no suggestion that his opinion is or is not that of the other two judges assigned to the three judge panel by the Chief Judge of the Eleventh Circuit Court of Appeals.[1]

There may be some misunderstanding as to the role of this court. The sole issue before this court on November 18, 1994 was framed by the plaintiff(s)' complaint wherein it was alleged that,

> The order of the Circuit Court of Montgomery County, Alabama hereinabove described brought about and will bring about changes to the voting standards, practices, or procedures in place on the effective date of the Voting Rights Act of 1965 affecting the election of candidates for office in Alabama which were required to be precleared under Section 5 of the Voting Rights Act of 1965.
>
> The execution and implementation [of] said orders without first obtaining the approval of the United States Attorney General violate Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c.

On November 18, 1994, this judge preliminarily concluded that the order of the Circuit Court of Montgomery County, Alabama clearly brought about and will bring about changes to

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[1]As this judge made plain at the hearing on November 22, the decision of this court to dissolve its own restraining order had no effect on, nor did it conflict with, the ruling of any other court, state or federal. The three-judge panel in this case sat as a trial court, not an appellate court. To this judge's knowledge the action in this case was the only pending case which addressed § 5 of the Voting Rights Act. That was the only federal law addressed by this court. The attorneys, of course, were well aware of the foregoing. Their clients should have had no misunderstanding.

voting standards, practices or procedures. With regard to absentee ballot affidavits, § 17-10-7, provides "Your signature *must* be witnessed by either: A notary public or other officer authorized to acknowledge oaths or two witnesses 18 years of age or older." (Emphasis added).[2] This court respectfully disagrees with a conclusion that an "affidavit" which does not include either of the prescribed attestations "substantially complies" with the statute. Further, this judge does not agree that *Williams v. Lide*, 628 So. 2d 531 (Ala. 1993) so holds. Further, there was no evidence that *Williams v. Lide* itself had been precleared prior to November 8, 1994.

This judge, having determined that the Montgomery County Circuit Court order constituted, in midstream, a change in voting procedures, had only one other issue to address on November 18, 1994. That issue was whether, at the time of the filing of this action, approval of the change had been obtained from the United States Attorney General. It is undisputed that, at that time, it had not been. Based on these two findings and conclusions, this judge issued the final temporary restraining order, as amended, after notice and hearing. The court set November 22, 1994 as a date for the three judge panel to consider the application for preliminary injunction. See 28 U.S.C. § 2284(b) (3).

Early in the morning of November 22, 1994, the Office of the Attorney General of the United States issued a letter which purportedly stated that the Attorney General interposed no objection to the change created by the order of the Circuit Court of Montgomery, Alabama. The letter did not specifically mention the order of said state circuit court. Neither did the letter refer to any basis for a determination that the change is free of

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[2]It is not clear who represented the voters of Alabama in said case. Of course, the same question might be asked concerning this case.

discriminatory purpose and effect or that such a decision had been specifically made.[3] Apparently, this "determination" was made quickly and in a conclusory fashion, based upon "evidence" from sources of which this court is unaware. This court can quickly think of several possible reasons for concluding that the change is not free of discriminatory purpose and effect. First, the change was made in midstream after a preliminary count had been completed and reported to the Secretary of State of Alabama. Such a "wait and see" approach could clearly suggest discriminatory purpose and effect. Second, the new rule, having been announced *after* the election, was patently discriminatory as to those potential voters who may have felt that they would have to comply with the seemingly stringent requirements of § 17-10-7 in order to vote an absentee ballot.

It is undisputed that the current instructions of the Secretary of State and an earlier opinion of the Attorney General of Alabama had clearly required compliance with the notary or witness provision of § 17-10-7.[4] The foregoing, coupled with the common knowledge that absentee ballots have been historically an area fraught with the potential for fraudulent abuse, suggests the potential for discrimination. The cases which this judge has read suggest that the purpose of the subject statutory provision

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[3]28 CFR Ch 1 (7-1-94 Edition) Subpart F, which prescribes the standards applicable to "Determinations by the Attorney General" includes the following at § 51.52(c).

> (c)*Objection.* An objection shall be interposed to a submitted change if the Attorney General is unable to determine that the change is free of discriminatory purpose and effect. This includes those situations where the evidence as to the purpose or effect of the change is conflicting and the Attorney General is unable to determine that the change is free of discriminatory purpose and effect.

[4]*See Henderson v. Graddick*, 641 F. Supp. 1192 (M.D. Ala. 1986) for a discussion of the effect of action of the Attorney General of the State of Alabama with regard to election procedures.

is to protect the integrity of the ballot. It is obvious that the lack of such a requirement lends itself to misleading, intimidation, or even forgery.[5] The legislative desire to protect the integrity of such ballots is commendable.

Notwithstanding the foregoing, this court is bound by the "determination" of the United States Justice Department which some, perhaps, would commend for its prompt action.[6] In *Morris v. Gressette*, 432 U.S. 491, 507 (1977), the United Supreme Court stated,

> Where the discriminatory character of an enactment is not detected upon review by the Attorney General, it can be challenged in traditional constitutional litigation. But it cannot be questioned in a suit seeking judicial review of the Attorney General's exercise of discretion under § 5, or [her] failure to object within the statutory period.

Further,

> For the reasons stated in the text, we think Congress intended to preclude all judicial review of the Attorney General's exercise of discretion or failure to act.

---

[5]Plaintiff(s)' First Amended Complaint has an attached statement from a voter who says that she was not allowed to vote personally in the November 8, 1994 election because she "had already voted absentee." The declarant states that she had not voted absentee. There are other declarations concerning voting by dead people, non-residents, etc.

[6]The response of the Office of the Attorney General to the court's request for clarification removed doubt as to the intent of that Office. Curiously, the initial letter suggests that possible previous non-precleared violations, on a county by county basis, of the apparently precleared Alabama statute created a situation whereby present adherence to the statute would have to be precleared.

Id. 432 U.S. at 507, n. 24.[7]

The § 5 determination of the Attorney General having been received, this judge had no choice other than to vote to dissolve the temporary restraining order. Regardless of whether this judge may be personally repulsed by the circumstances pertinent to this case, this judge's respect for the law as an institution prohibits his abusing his authority even in an attempt to remedy

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[7]In dissent, Justice Marshall (Justice Brennan concurring) stated,

> Under the Court's ruling, it matters not whether the Attorney General fails to object because he misunderstands his legal duty, as in this case; because he loses the submission; or because he seeks to subvert the Voting Rights Act. Indeed, the Court today grants unreviewable discretion to a future Attorney General to bargain acquiescence in a discriminatory change in a covered State's voting laws in return for the State's electoral votes. Cf. J. Randall & D. Donald, The Civil War and Reconstruction 678-701 (2d ed. 1961) (settlement of the election of 1876).
>
> Common sense proclaims the error of this result. It is simply implausible that Congress, which devoted unusual attention to this Act in recognition of its stringency and importance, see *South Carolina v. Katzenbach*, 383 U.S. 301, 308-09. . . (1966), intended to allow the Act's primary enforcement mechanism to be vitiated at the whim of an Attorney General. Legal analysis supports the conclusion that congress did no such thing. But today, the majority puts aside both common sense and legal analysis, relying instead on fiat. I dissent.

(footnote omitted). *Id.*, 432 U.S. at 507.

Justice Hugo Black's dissent in *South Carolina v. Katzenbach*, 383 U.S. 301, 355-362 (1966) also questioned the delegation of such authority to the Attorney General of the United Stated under § 5.

other perceived abuses.[8] A Justice of the Supreme Court of the United States recently expressed his concern about the deterioration of the law as an institution. This judge will not contribute to any such decline.

This 25th day of November, 1994.

/s/ Robert B. Propst

ROBERT B. PROPST
UNITED STATES DISTRICT JUDGE

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[8]This court has neither officially approved nor officially disapproved the determination of the Attorney General of the United States nor the order or ruling of any other court, state or federal.

APPENDIX F

Filed, March 17,

Clerk Supreme Court of Alabama

Judicial Inquiry Commission
800 South McDonough Street
Montgomery, Alabama 36104
March 17, 1995

The Honorable Terry L. Butts
Associate Justice
Alabama Supreme Court
300 Dexter Avenue
Montgomery, Alabama 36104

Dear Justice Butts:

The Judicial Inquiry Commission* has considered your request for an opinion concerning whether your disqualification is required in *Roe v. Boggan,* Case No. 1940461, the case of the certified question from the Eleventh Circuit United States Court of Appeals regarding Alabama law on the counting of absentee ballots in the 1994 general election in which the election of Alabama's Chief Justice is at issue. You specifically asked whether an associate justice "impartiality might reasonably be questioned", thus requiring disqualification under Canon 3C(1), due to any of the following circumstances:

1. You were a candidate for the position of Associate Justice in the election at issue and were elected;

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*Justice Kennedy did not participate in the rendition of this Opinion.

2. You appeared on platforms with the incumbent Chief Justice at the same political forums, where you and he sought and received political endorsements from the same groups;

3. You and the incumbent Chief Justice shared and used some of the same advertising and media consultants, polling data, and other campaign personnel;

4. You and the incumbent Chief Justice are members of the same political party;

5. You received a campaign contribution from the incumbent Chief Justice's attorney son;

6. You received a campaign contribution from the law firm in which the incumbent Chief Justice's son is a partner;

7. You received campaign contributions from law firms that are representing a class of plaintiffs in a lawsuit closely related to *Roe v. Boggan.* These firms also contributed to the incumbent Chief Justice's campaign; and

8. The ruling on the certified question, and the effect it may have on the disposition of *Roe v. Boggan,* could affect the final vote totals in your 1994 election. However, it should not affect the outcome.

While your request for an advisory opinion was under consideration by the Commission, the Supreme Court of Alabama, on March 14, 1995, entered it's decision in the above referenced case. In that decision, the Supreme Court ruled that disqualification was not required. However, since further proceedings may occur in this case, your request is not moot.

It is the opinion of this Commission, in response to your request, that based upon the decision of the Supreme Court, on March 14, 1995, you are not disqualified. However, it is the recommendation of the Commission that you should recuse yourself from any

future participation in the above referenced case. The Commission bases its recommendation on the totality of the circumstances with special focus on the apparent interrelationship of your campaign with that of the incumbent Chief Justice. The Commission views recusal as especially appropriate not only due to the above factors but also because of the climate surrounding the 1994 Alabama elections. See Canons 1, 2A, 2C, 3C(1)(a), (c), and (d), and 7A(1).

The Commission does not suggest that you are actually biased, nor does it question your representation that you are able to render impartial judgment in the case at issue. However, the reasonable persons/appearance of impropriety standard in Canon 3C(1), along with the other canons, provides a basis for this recommendation. As the Supreme Court of Alabama has stated previously:

> The appearance of fairness is virtually as important as is fairness itself. One of the essential ingredients of an effective judiciary is the high level of respect accorded it by the citizenry. Except for the impartiality of those who occupy the role of judge, both in act and appearance, the level of respect necessary to a strong and effective judiciary will fail. It is the essence of the system that any position of interest or bias is sufficient cause for disqualification of the judge, and the right to raise and insist upon the causes of disqualification must be zealously guarded.

Morgan County Commission v. Powell, 293 So. 2d 830, 840 (Ala. 1974).

Sincerely,

/s/ Braxton L. Kittrell, Jr.

BRAXTON L. KITTRELL, JR.
Chairman

APPENDIX G

1940461

IN THE SUPREME COURT OF ALABAMA

March 13, 1995

Larry Roe, et al. v. Mobile County Appointing Board, et al., (9407138); Larry Roe, et al. v. State of Alabama, by and through its Attorney General James Evans, et al., (94-7155).

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

ORDER

This Court has consented to answer the question certified by the United States Court of Appeals for the Eleventh Circuit, Larry Roe, et al. v. Mobile County Appointing Board, et al., (9407138); Larry Roe, et al. v. State of Alabama, by and through its Attorney General James Evans, et al., (94-7155).

This Court has determined, upon a consideration of the certified question and the materials submitted thereon, that a complete and reasoned answer to the certified question requires the record in *Odom v. Bennett* (Michael Lewis Odom and John W. Davis v. Jim Bennett, Walker Hobbie, Jr., Debbie Hackett, and Dan Jones (CV 94-2434)) to be before this Court. The Montgomery County Circuit Court, Eugene W. Reese, J., issued an injunction in *Odom v. Bennett* in November 1994, but no appeal was taken. Due to the gravity of the situation involved in *Odom v. Bennett* and *Roe v. Mobile County Appointing Board,* and due to the time constraints caused by the ongoing delay in certifying the results of the November general election, the Supreme Court of Alabama hereby exercises its supervisory jurisdiction to order the Circuit Clerk of Montgomery County, Alabama, to certify a copy of the record in *Odom v. Bennett* to this Court.

IT IS THEREFORE ORDERED, that the Circuit Clerk of Montgomery County, Alabama, certify a copy of the record in *Odom v. Bennett* (CV 94-2434) and forward the same to the Clerk of the Supreme Court of Alabama *instanter*.

Almon, Shores, Ingram, and Cook, JJ., concur.

Maddox, J., dissents.

Hornsby, C.J., and Houston, J., recused.

Robert G. Esdale, as Clerk of the Supreme Court Alabama, do herby certify that the foregoing is full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said court.

Witness my hand this 13th day of March, 1995

/s/ Robert G Esdale
ROBERT G. ESDALE
Clerk, Supreme Court of Alabama